

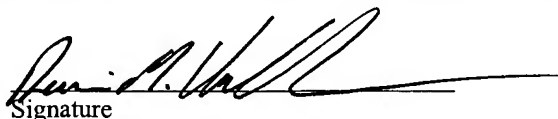


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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:

MASIGNANI et al.

Confirmation No.: 6882

Serial No.: 10/031,289

Group Art Unit: 1645

Filing Date: May 31, 2002

Examiner: S. DEVI

Title: ANTIGENIC MENINGOCOCCAL PEPTIDES

RESPONSE TO REQUIREMENT FOR RESTRICTION
AND SECOND PRELIMINARY AMENDMENT

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

This is in response to the Restriction and Species Election Requirement dated May 7, 2004 with an initial response due on or before June 7, 2004. Accordingly, applicants request an extension of time in which to respond and the appropriate fees accompany this response.

Also enclosed is a Second Preliminary Amendment. Reconsideration of the application is requested in view of the following amendments and remarks.

RESPONSE TO REQUIREMENT FOR RESTRICTION

The Examiner required election of one of the following groups of claims:

Group I. Claims 1-4, 6, 8, 10 and 16, drawn to a fragment of a protein disclosed in WO 99/36544 or a protein fragment with at least 50% sequence identity thereto comprising at least one antigenic determinant and a composition comprising the same;

Group II. Claims 9, 14, 17 and 18, drawn to a nucleic acid encoding a fragment of a protein disclosed in WO 99/36544 or a protein fragment with at least 50% sequence identity thereto comprising at least one antigenic determinant and a composition comprising the same;

Group III. Claims 7 and 15, drawn to an antibody which recognizes a fragment of a protein disclosed in WO 99/36544 or a protein fragment with at least 50% sequence identity thereto comprising at least one antigenic determinant and a composition comprising the same;

Group IV. Claims 13 and 20, drawn to a method of treating a patient by administering a composition comprising a fragment of a protein disclosed in WO 99/36544 or a protein fragment with at least 50% sequence identity thereto comprising at least one antigenic determinant;

Group V. Claim 19, drawn to a method of treating a patient by administering a composition comprising an antibody to a fragment of a protein disclosed in WO 99/36544 or a protein fragment with at least 50% sequence identity thereto comprising at least one antigenic determinant;

Group VI. Claims 21 and 22, drawn to a method of treating a patient by administering a composition comprising a nucleic acid encoding a fragment of a protein disclosed in WO 99/36544 or a protein fragment with at least 50% sequence identity thereto comprising at least one antigenic determinant;

Group VII. Claim 23, drawn to a method of detecting the presence of a meningococcal protein in a biological sample using an antibody to a protein fragment disclosed in WO 99/36544; and

Group VIII. Claim 24, drawn to a method of detecting the presence of meningococcal antibodies in a biological sample using a protein fragment disclosed in WO 99/36544.

The Examiner also required applicants to select a single recited protein or DNA sequence, or a single antibody specific to one of the recited protein sequences for examination.

In response to the restriction requirement, applicants elect to prosecute the claims of Group I, with traverse. Applicants expressly reserve their right under 35 USC §121 to file one or more divisional applications directed to the nonelected subject matter during the pendency of this application.

In response to the species election requirement, applicants elect the species represented by SEQ ID NO:1331, amino acids 959-976 of ORF 114-1. The elected non-cancelled claims reading on this species are claims 1 and 10 and new claims 25-32. Should the Examiner rejoin the claims as proposed herein, all claims will read on the elected species. It is to be understood that this election of species is for the purposes of preliminary search and examination only, and that upon allowance of a generic claim, applicants will be entitled to consideration of claims to the additional species.

Applicants traverse this restriction requirement for the following reasons. The claims as amended in the Second Preliminary Amendment presented herein all pertain to the same elected species, namely peptides including SEQ ID NO:1331. As recognized by the Examiner, it is proper to examine claims together that include the same special technical feature. The special technical feature of the claims of Group I is a protein including the amino acid sequence of SEQ ID NO:1331. As explained in the Office Communication, PCT Rule 13.2 permits the product of Group I and the method of using the product of Group IV to be examined together if they distinguish over the art. Applicants submit the present claims indeed distinguish from the art. Thus, at the very least, claims 1, 10, 13 and new claims 25-33 should be examined together.

Moreover, since all claims now recite the same amino acid sequence, they should be examined as a single group. Applicants submit that an examination of the claims as proposed would not impose a serious burden on the Examiner. MPEP 803 states:

If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to distinct or independent inventions. (Emphasis added).

Accordingly, examination of the following claims as a single group is respectfully solicited.